

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 21-30392

-V-

GABRIEL ANTONE EBERHARDT,

Defendant.

1

DETENTION AND REMOVAL HEARING

(Via Video Conference)

BEFORE THE HONORABLE **PATRICIA T. MORRIS**

United States Magistrate Judge

United States Post Office Building

1000 Washington Avenue

Bay City, Michigan

August 18, 2021

APPEARANCES :

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1 Bay City, Michigan

2 August 18, 2021

3 2:53 p.m.

4 * * *

5 THE CLERK: Now calling case No. 21-30392, the United
6 States of America vs. Gabriel Eberhardt.

7 MS. YOUNGBLOOD: Good afternoon, your Honor. Sarah
8 Youngblood on behalf of the United States.

9 THE COURT: Thank you, Ms. Youngblood.

10 MR. NASSER: And good afternoon, your Honor. Good
11 afternoon to your staff. May it please this most Honorable
12 Court, Mohammed Nasser appearing on behalf of and with Mr.
13 Gabriel Eberhardt, who also appears via Zoom at the jail.

14 Mr. Eberhardt, please identify yourself for this
15 Court.

16 Can you unmute yourself, please, sir?

17 THE DEFENDANT: Sorry about that.

18 Hi, your Honor. I'm Gabriel Eberhardt. Good
19 afternoon to your staff and yourself as well.

20 THE COURT: Thank you, Mr. Eberhardt. And thank you,
21 Mr. Nasser.

22 I should ask you, is it Eberhardt or Eberhardt?

23 THE DEFENDANT: Eberhardt.

24 THE COURT: Okay. Great. Thank you.

25 THE DEFENDANT: Thank you.

1 THE COURT: And you do consent to us proceeding by
2 Zoom, Mr. Eberhardt?

3 THE DEFENDANT: Yes, ma'am. I mean, yes, your Honor.

4 THE COURT: Thanks very much.

5 So I think today, our purpose is for a detention
6 hearing, and the question is detention pending appearance in
7 the charging district, which is the District of Hawaii, which I
8 can say I think we would all like to go with you. If that
9 could be arranged, we would be all for it.

10 Is that correct, Ms. Youngblood?

11 MS. YOUNGBLOOD: Yes. The information, and my wish to
12 go to Hawaii, your Honor. Yes.

13 THE COURT: Yes, yes, and yes.

14 Well, then I think if everyone is ready, we can go
15 right ahead with that. Go ahead, Ms. Youngblood.

16 MS. YOUNGBLOOD: Thank you, your Honor.

17 Mr. Eberhardt has been charged in an indictment in the
18 District of Hawaii with two counts of distribution of 40 grams
19 or more of a fentanyl mixture in violation of 21 United States
20 Code, Section 841(a)(1), and Section 841(b)(1)(B)(vi). He's
21 also been indicted on one count of distribution of 50 grams or
22 more of methamphetamine in violation of 21 United States Code,
23 Section 841(a)(1) and Section 841(b)(1)(A)(viii).

24 The Government is seeking detention on the basis of
25 dangerousness and risk of flight. Given the nature of the

1 offenses and the probable cause established in the indictment,
2 there is a presumption in this case that no condition or
3 combination of conditions will reasonably assure the appearance
4 of Mr. Eberhardt as required in Hawaii, or the safety of the
5 community.

6 May I proceed by proffer?

7 THE COURT: Yes. And you can feel to combine proffer
8 with argument or however you want to do it is fine. Thank you.

9 MS. YOUNGBLOOD: Thank you, your Honor.

10 I'll begin by proffering the complaint, the
11 indictment, Pretrial Services' report, which does recommend
12 detention, the defendant's criminal history, and following
13 facts from the investigation:

14 This case begins with Mr. Eberhardt on bond for felony
15 firearms offenses out of Wayne County. Law enforcement in
16 Hawaii has been investigating -- investigating a drug
17 trafficking organization. Through the course of this
18 investigation, Mr. Eberhardt was identified as an operational
19 leader of this drug trafficking organization. The indictment
20 is based on events in May and June of 2021 where undercover
21 employees called and texted Mr. Eberhardt to arrange purchases
22 of narcotics.

23 Mr. Eberhardt traveled to the place of purchase in
24 Hawaii, and while there, Mr. Eberhardt sent other people to
25 exchange the narcotics with these undercover employees.

1 On June 14th, 2021, following the incident on which
2 Count 3 is based, Mr. Eberhardt traveled to a storage unit in
3 Hawaii. Mr. Eberhardt is not listed as the tenant of this
4 unit. Video records from the storage facility show Mr.
5 Eberhardt removing what appears to be a duffle bag and a
6 backpack from the car he arrived in, and he walks to and enters
7 an elevator alone. He rides that elevator to the floor where
8 the storage unit was located, walked towards the direction of
9 that unit, and then is off screen for approximately two
10 minutes. The video footage then picks up with Mr. Eberhardt
11 walking back towards the elevator. He's empty-handed, and
12 again, alone. He takes that elevator, exits the building, and
13 exits the storage facility.

14 The following information is simply meant to provide
15 context for the nature of the drug trafficking organization
16 overall.

17 Law enforcement searched that storage unit on June
18 30th, 2021 and recovered three assault rifles, two
19 semi-automatic pistols, extended magazines, ammunition, a
20 bulletproof vest and narcotics.

21 Through additional search warrants completed at other
22 locations utilized by the drug organization, officers recovered
23 multiple pounds of methamphetamine, fentanyl, and heroin, as
24 well as more than \$250,000 in cash.

25 Mr. Eberhardt has a violent criminal history,

1 including assault with intent to murder, for which he served
2 approximately 15 years in prison. Following his release, the
3 defendant began a two-year parole term in February of 2017.
4 Less than a year into this parole term, he violated by engaging
5 in additional criminal activity involving narcotics
6 distribution. Officers stopped a car that the defendant was
7 driving. Two passengers inside the car told officers that the
8 defendant had given them narcotics, and they noted that they
9 purchased narcotics from the defendant before on multiple
10 occasions.

11 Less than a year after that incident, the defendant's
12 parole was violated again. He was arrested by Dearborn Police
13 for domestic violence. He bit and hit a woman as part of that
14 incident. The parole officer writing this violation report
15 indicated that the defendant had adjusted poorly to parole and
16 remarked that his temper was a particular weakness.

17 Most recently, in July of 2020, the defendant was
18 arrested by Detroit Police for a felony firearm offense. As
19 officers approached Mr. Eberhardt and another individual in
20 Detroit, the defendant fled on foot. Officers saw the
21 defendant pull a gun from his waistband and hold it in his hand
22 as he fled. Officers eventually detained Mr. Eberhardt and
23 located a loaded gun in his path of flight. That case is
24 currently pending in Wayne County Circuit Court, and the
25 defendant was on bond for that case at the time of the event,

1 excuse me, at the time of the events alleged in this
2 indictment.

3 Your Honor, that's the extent of the Government's
4 proffer. Based on these reasons, the Government seeks
5 detention.

6 May I please proceed to argument?

7 THE COURT: Yes. Thank you.

8 MS. YOUNGBLOOD: Thank you.

9 The Government believes the following factors justify
10 detention on the basis of danger to the community, as well as
11 risk of flight.

12 First, regarding the nature and circumstance of this
13 federal offense, this offense is very serious and it shows a
14 disregard for the law. These are three controlled substance
15 offenses with mandatory minimums of five years and ten years
16 because Congress has recognized these are deadly and dangerous
17 drugs. It's also notable that the conduct on which this case
18 is based occurred while the defendant was on bond for a felony
19 firearms case in Wayne County. This indicates that court --
20 court supervision is not a deterrent for him.

21 Turning, second, to the weight of the evidence, there
22 is significant evidence here that the defendant is both a
23 danger to the community and the risk of flight.

24 There are two reasons that no conditions can assure
25 the safety of the community here. First, there is probable

1 cause to believe the defendant distributed multiple types of
2 dangerous drugs in Hawaii while under court supervision.

3 This is also not the first time that the defendant has
4 faced narcotics allegations while under supervision. He
5 violated his parole following an arrest where witnesses told
6 police defendant gave them drugs to hold that day so the
7 defendant -- so that the drugs would not be found on the
8 defendant. And those same witnesses told officers that they
9 had bought drugs from the defendant on multiple prior
10 occasions.

11 Second, the defendant has a history of physical
12 violence, including a history of using guns. He was convicted
13 with assault -- convicted of assault with intent to murder and
14 sentenced to 15 to 25 years in Wayne County Circuit Court.
15 Based on my experience, this is a considerably significant
16 sentence from Wayne County, especially for a case that did not
17 result in death. Finally, the defendant also has a history of
18 violence at home. His parole was violated for biting and
19 hitting a woman.

20 Turning to flight, the defendant has consistently
21 shown that he will not comply with court supervision, which
22 indicates a risk of non-compliance with this Court's orders,
23 and non-appearance in this case in Hawaii, and this risk cannot
24 be mitigated by conditions here.

25 His parole officer has noted that Mr. Eberhardt

1 adjusted poorly to parole. The defendant has a history of
2 criminal activity while under supervision, and he fled from
3 police during the incident that led to his arrest for his
4 pending state firearms case. He also does not appear to have
5 any ties to Hawaii, the charging district, other than the
6 criminal conduct alleged in the indictment. Moreover, this
7 charging district is far away and difficult to travel to.

8 Moving to the history and characteristics of the
9 defendant, he is unemployed with no stable income. This
10 indicates that he does not have the means to get to Hawaii.

11 His history also includes significant criminal
12 history. Again, a violent assault with intent to murder, as
13 well as poor adjustment to parole when he was released from his
14 prison term for that assault with intent to murder conviction,
15 and then criminal activity while under supervision.

16 Finally, the nature and seriousness of danger to the
17 community. The defendant's violence, criminal activity under
18 supervision, and difficulty traveling to a faraway charging
19 district where he has no other ties present a serious risk of
20 danger to the community and risk of flight.

21 The Government is, therefore, seeking detention
22 because no condition or combination of conditions will
23 reasonably assure the safety of the community and the
24 appearance of the defendant as required. Detention is
25 consistent with Pretrial Services's recommendation.

1 Thank you.

2 THE COURT: Thank you, Ms. Youngblood.

3 Go ahead, Mr. Nasser.

4 MR. NASSER: Thank you.

5 Your Honor, if it may please this Honorable Court,
6 first and foremost, the U.S. Attorney here has allocuted very,
7 very well on behalf of the Government; however, Judge, there
8 are some factors that this Court should be aware of.

9 I'm going to start with, first and foremost, it's
10 uncontested that this is a presumption case. Pursuant to the
11 Bail Reform Act 18 USC 3142, a defendant may be only detained
12 pending trial if there is no condition or combination of
13 conditions which will reasonably assure his appearance at trial
14 and the safety to the community. Once the Government has met
15 their preliminary burden, the defendant may rebut this
16 presumption proffered by producing some credible evidence that
17 he will appear and will not pose a threat to the community.
18 This is *United States v. Carbone*, 793 F.2d 559.

19 Now, undeniably, the U.S. Attorney has focused a lot
20 on this young man's previous history. He's 39 years of age.
21 He has a minor child. He's a lifelong resident of the city of
22 Detroit. And while sister counsel has indicated that perhaps
23 flight risk is a problem based upon the fact that he's not
24 situated in Hawaii or Hawaii is a significant distance away,
25 this Court is fully aware of the fact that pursuant to

1 Townsend, which is *United States v. Townsend*, 897 F.2d 989,
2 which is a 1990 case, that community is not limited to the
3 charging district but extends to any community within the
4 United States, and that would include Detroit where he's a
5 lifelong resident. So I don't think the fact that Hawaii is a
6 distance away and he doesn't reside in Hawaii, that has zero
7 basis on this Court's determination because pursuant to
8 *Townsend*, it's the United States, and any district within the
9 United States is a valid district to reside in.

10 But, Judge, let's focus on the actual criminal
11 history, which is what sister counsel brought up. Let's talk
12 about this. He was charged with assault with intent to murder,
13 which is attempted murder, AWIM, in the Third Circuit Court,
14 this was back in 2000. So he was only 17 years of age at the
15 time. He went to bench trial and he was sentenced to 15 to 25
16 years.

17 Now, sister counsel indicated that when he got
18 released, this Court should be apprised of the fact that he
19 successfully completed parole. This was closed out. This is a
20 life offense. His parole could have been extended. It was
21 not.

22 Now, sister counsel points to an incident where he
23 violated, and there was a case out of Westland. Yes, that
24 happened in 2017 when he was 35 years of age. The original
25 charge was a felony dangerous drugs. Bear in mind, the two

1 co-defendants, the two alleged women that were in this matter
2 were also charged. I was his attorney on that matter, and
3 ultimately, the drug offense was dismissed and he pled to a
4 disorderly conduct. Disorderly conduct is an individual that
5 is loud and boisterous. Disorderly conduct is a 90-day
6 misdemeanor, which is not even abstractable in a CCH in a state
7 court. He was given fines and costs. That's what was given,
8 Judge. So sister counsel is pointing to a drug offense. He
9 has zero -- he has zero drug offenses in his history. None.

10 Let's talk about the next offense. The next offense
11 was an alleged domestic violence while again on parole. The
12 Court is fully apprised and as outlined within the Pretrial
13 Services' report -- again, I was his attorney on that case as
14 well. That case was dismissed. So any allegations or
15 suggestions that were brought up pursuant to an alleged
16 domestic violence, the Court deemed it to be inappropriate and
17 found it dismissed. So there is absolutely no veracity to that
18 statement. None. He doesn't have a drug history. He does not
19 have -- he does not certainly have a domestic situation
20 history, which is predicated upon the 2018 dismissal. We're
21 looking at cases that stretch back to 2000, Judge. We're
22 talking 21 years ago.

23 But let's, let's stick to the perimeters of the
24 allegations that are listed within the actual indictment.
25 First and foremost, Mr. Gabriel Eberhardt has retained counsel,

1 myself and my office, the Office of Todd Russell Perkins, so
2 issues of finance are not there, Judge. I am not an appointed
3 attorney. He's already retained my services. While he is not
4 gainfully employed at this point, he was formerly gainfully
5 employed. But more importantly, he has a supportive family who
6 has retained our services.

7 Secondly, this matter, Judge, was sealed. We were
8 looking into this matter. It was sealed. Not even the U.S.
9 Attorney that stands before this Court or the Court had any
10 information about this indictment until it was unsealed by
11 Hawaii some six hours away. So we are prepared to proceed.
12 And if given bond, or once, God willing, given bond, we will
13 assure this Honorable Court that we will be in Hawaii within
14 seven days. We had already booked our flights but we are
15 waiting upon the verification of whether or not he gets bond in
16 order to travel our way to Hawaii.

17 As it relates to the allegations that are listed here,
18 Judge, we're talking about three specific dates. You're
19 talking about May 20th, 2021, you're talking about June 1st,
20 2021, and you're talking about June 14th, 2021. Those are the
21 dates that are listed within the indictment. There is
22 absolutely not a single count that involves any guns at all.

23 The position of the U.S. Attorney that this individual
24 is some type of mastermind is not, is not certainly buttressed
25 by the complaint or the sealed indictment that's been offered

1 here today.

2 But, Judge, the question that confronts this Honorable
3 Court is, one, is this a presumption case. The answer is yes.

4 Two, is this a rebuttable presumption, and is some
5 credible evidence being offered that can assure this Honorable
6 Court that there are conditions or a set of conditions that can
7 be set by this Court to ensure that, one, danger to the
8 community, and two, flight risk.

9 Two, as it relates to the flight risk, I believe that
10 the argument about Hawaii is invalid, and certainly, he is a
11 lifelong resident of Detroit. All of the information in the
12 Pretrial Services' report was verified by his mother. He has
13 provided information as to where he's lived. Where he was
14 picked up, Judge, was his home. He wasn't hiding. He wasn't
15 running. He was at home. The Marshals Services went and
16 collected him at the address that has been known, that is
17 listed on his ID, and he's been there for more than three
18 years. And again, he had already retained counsel. We were
19 already there and we were looking into any allegations out of
20 Hawaii; however, it was sealed, and were unable to get any
21 information about that.

22 Dangerousness. Now, dangerousness of course, as this
23 Court is aware, does not relate to the dangerousness in terms
24 of the weight of evidence and in terms of guilt, but it relates
25 to dangerousness as it relates to the bond components, and are

1 there conditions that can be set.

2 Judge, I, I submit to this Honorable Court, that, one,
3 this Court can set a GPS tether.

4 Two, this Court can set house arrest, other than his
5 ability to fly to Hawaii.

6 And three, this Court can set a very short leash.

7 Seven days is all we ask. We will be in Hawaii, and we will
8 get arraigned on this matter once again, and begin the clock on
9 this matter. We are confident that there are defenses in this
10 matter, Judge. And moreover, Mr. Eberhardt as the ability to
11 defend these allegations.

12 Now, sister counsel did mention an interesting thing
13 that must be brought to this Court's attention, that while on
14 bond for a CCW, felon in possession, felony firearm out of the
15 Third Circuit, well, actually out of the 36th District Court is
16 when these allegations took place. I am the attorney on that
17 case, Judge. There was a preliminary exam on this case.

18 There is a clear issue as it relates to the
19 identification of my client, and more aptly, any possession of
20 any firearm. This alleged firearm was found some distance
21 away; that this individual was walking away from the officers.
22 Officers gave chase. The officer admitted on the stand that
23 this was not -- that he didn't identify himself as an officer,
24 and there is nothing illegal about this person walking away.
25 Ultimately, there was a firearm found within some distance of

1 my client. No forensics, no DNA, and as it turned out the
2 firearm was legally owned by somebody else. So there is
3 ostensible defenses, Judge, ostensible. And I'm confident that
4 motionable issues -- there will be motionable issues, motions
5 to quash, motions to suppress, that will be filed at the
6 Circuit Court level.

7 So certainly while I appreciate the sentiments of the
8 U.S. Attorney as it relates to this alleged conduct on bond,
9 this alleged conduct is being contested vehemently by counsel
10 that is present here today.

11 I've addressed all of this young man's matters since
12 his release. So he has substantial ties to the community, and
13 he has substantial ties to this firm. And we are confident
14 that we -- and I have addressed all of his matters. And I'm
15 confident that I'm going to be able to address the Detroit
16 matter. And I'm asking this Honorable Court that there are a
17 set of conditions, while the sentiments of Pretrial Services'
18 report do not reflect that, I believe that that is largely
19 predicated and, and, and suggested, and not suggested, stated
20 within the writing.

21 One of the issues was his lack of employment. And
22 that is something that this Court should bestow as this
23 individual should not be out. That is the furthest from the
24 truth, Judge. Now, this individual has the opportunity to have
25 gainful employment. He did have gainful employment.

1 In speaking to his mother, there is opportunity for
2 gainful employment again. And although, this has been
3 suppressed by this allegation that is present, he can get back
4 to work and proof of employment can be offered within 14 days
5 of him being on bond. Of course, we're going to be going to
6 Hawaii, so, you know, he can't be working once we're flying,
7 but there can be proof offered as it relates to that, Judge.

8 Again, the position of the defense, Judge, is that
9 this Court does have the ability to discern -- the safety of
10 the community, I believe, is the major crux here. Any time
11 there is an allegation of narcotics, there is a clear safety to
12 the community issue that is presented to any court, even one as
13 reasonable as this Court, undeniably, that goes without saying.
14 However, these allegations allegedly took place months ago.
15 They took place in May and in June. This indictment came out.
16 There has been no alleged conduct or contact with the criminal
17 justice system since that alleged time.

18 More importantly, the officers, or the U.S. Marshals
19 burst into his home, they didn't find any firearms. They
20 didn't find any guns. They didn't find any drugs. They didn't
21 find any packaging. They didn't find any money. They didn't
22 find anything that is reflective of an individual who is an
23 alleged chapo mastermind of some type of drug cartel. They
24 didn't find anything even remotely close to that. If that was
25 found in his home, certainly that would have been something

1 that was brought to the attention of this Court, and listed
2 within the documents here.

3 So, Judge, I am asking this Honorable Court to allow
4 us the opportunity within seven days to present, again, GPS
5 tether will be effects, house arrest at his home, until that is
6 done. There are two homes that are present, the home that he's
7 been staying at for the last three years, and the home of his
8 mother, who is a lifelong Detroit resident with absolutely no
9 prior record whatsoever. So that is the position of defense.

10 And I believe, Judge, we've presented conditions or a
11 set of conditions that have rebutted the presumption and, and
12 as listed. The presumption is rebuttable, and it is viewed in
13 the auspice of some credible evidence. The fact that he has
14 retained counsel, the fact that these matters have been
15 addressed, the fact that he has ostensible defenses in the
16 state matters, and more importantly that these matters have
17 taken place some months ago with the ability to defend, I
18 believe is some credible evidence and I'm asking this Court to
19 afford bond with set conditions.

20 THE COURT: Thank you, Mr. Nasser.

21 Ms. Youngblood, do you have any brief rebuttal?

22 MS. YOUNGBLOOD: Yes, your Honor. Thank you.

23 Even if the defendant is willing to take himself to
24 Hawaii, conditions cannot mitigate the danger to the community
25 here. His criminal history is significant because it shows

1 that court supervision is not appropriate in this case.

2 Within just the last five years, the defendant was in
3 prison for assault with intent to murder. He was released on
4 parole, and he violated it twice. Now, the conduct for the
5 basis of those violations, the Government believes also
6 indicates a danger.

7 But even just focused on the significance here of the
8 violations, it's showing that the Court should not trust him to
9 be out on bond because he will not comply with court's orders
10 and the court's supervision.

11 Finally, home confinement or a tether is inappropriate
12 here because the defendant will remain a danger even if he's in
13 his home. He would be able to engage in the sale of narcotics
14 through remote means. As laid out more completely in the
15 complaint, the sales forming the basis of this indictment
16 involved purchasers contacting the defendant on the defendant's
17 cell phone. And the defendant used other people to handle the
18 actual drop off and collection of narcotics and money.

19 Also, the history of parole violations regarding
20 domestic violence indicates that home confinement can pose
21 other dangers for this defendant and those around him.

22 The Government believes that the defendant has not
23 rebutted his presumption in this case, although, even if he
24 had, the fact that this is a presumption case is just another
25 factor for the Court to consider here as to the danger to the

1 community, and no combination of conditions can reasonably
2 assure the safety of the community here. And that's why the
3 Government asked for detention, and Pretrial Services also has
4 recommended the same.

5 Thank you, your Honor.

6 THE COURT: Thank you, Ms. Youngblood.

7 And thank you, Mr. Nasser.

8 In looking under the factors under Section 3142(g),
9 the first is the nature and circumstances of the offense
10 charged. And I think we all agree here that the charges carry
11 with them a presumption in favor of detention. As noted by the
12 defense correctly, that presumption can be rebutted with some
13 credible evidence to, to make that rebuttal.

14 The next factor is the weight or the evidence
15 against -- the weight of the evidence, excuse me, of the
16 evidence against a person. And I think both counsel properly
17 noted that the weight of the evidence is, in this circuit
18 anyway, is the weight of the evidence of dangerousness, and not
19 the weight of the evidence of guilt.

20 As to history and characteristics of a person,
21 certainly, Mr. Eberhardt has good ties to the Eastern District
22 of Michigan. He's been a lifelong resident here. He has
23 family here that he's close to. Also, in looking at his
24 health, he has some issues, but is in generally pretty good
25 health, and no evidence of any current or past mental health

1 conditions that would pose any problems. So I think all of
2 those factors go in favor of Mr. Eberhardt.

3 The next factor is at the criminal history, and
4 that's, that's where things get more difficult for Mr.
5 Eberhardt. I do think his criminal history is pretty intense.
6 There is a couple probation and parole violations, one felony
7 firearm, and one of pending charges from 2020 in the Third
8 Circuit in Detroit. Those are just pending, I realize, but
9 probably we can assume probable cause supports them or they
10 wouldn't have stood.

11 But of course, the most damning one is I suppose the
12 conviction of assault with intent to murder. These violent
13 convictions, or the violent conviction, plus use of weapons all
14 the more exacerbates I think Congress's decision that
15 distribution of controlled substances is a per se danger to the
16 community, which is why there is the presumption in favor of
17 detention. And when you mix firearms and weapons used with
18 controlled substance delivery, of course, the danger does
19 nothing but increase.

20 I have not really focused on the financial issues. I
21 don't think that's important. I assume that the defendant
22 could get to Hawaii if he wanted to. And although, the defense
23 indicates, and argues very strenuously and very well that there
24 has been a rebuttal done here because they have presented
25 credible evidence to support the fact that they have rebutted

1 the presumption in favor of detention, and they focus on, you
2 know, taking these cases on, an affirmation from defense
3 counsel that he would go with and get Mr. Eberhardt to Hawaii.
4 I have no reason disbelieve that. I believe that Mr. Nasser
5 would do all he could to help, to help his client, and, and get
6 to Hawaii, and he indicates that he has some ostensible
7 defenses and motions that he would be bringing. But I don't
8 feel that that's the kind of evidence that we're looking for in
9 trying to rebut the presumption. Really, the evidence should
10 be focused on, in this case, you have to focus on both danger
11 and risk of non-appearance.

12 And I think the evidence offered by defense counsel
13 goes toward risk of non-appearance, and I understand that. But
14 I feel the stronger evidence, the bigger problem presented to
15 the Court as far as considering, you know, the idea that you
16 would fashion bond conditions is, is the danger, more than it
17 is the risk of non-appearance, and I don't feel that
18 presumption has been, has been rebutted.

19 I would tend to agree with, with the Government that,
20 you know, having found weapons together with pounds of
21 controlled substances, and the recent search warrants that led
22 to the charges in Hawaii indicate that I think there is a
23 danger here, even if the defendant were on a GPS tether, the
24 strongest thing that we could do. That can tell us where he
25 is, but it can't tell us what he's doing of course. And even

1 if he were in the home and stay there, he could still conduct
2 narcotics and controlled substance transactions whether he used
3 others, others as his runners, as he has in the past, or by
4 whatever means.

5 But I do find, unfortunately, in this case, that the
6 presumption in favor of detention here has not been rebutted,
7 especially as to dangerousness. And even if I could find it
8 rebutted as to risk of non-appearance, I just cannot on this
9 record find that the presumption has been rebutted as far as
10 dangerousness is concerned.

11 And so I do find that there are no condition or
12 combination of conditions that the Court can fashion to allay
13 the danger that this defendant poses to a reasonable level that
14 comfortable with. And for these reasons then, the defendant
15 will be detained pending his appearance in the District of
16 Hawaii.

17 I thank you both for your excellent arguments. You
18 made it a much closer call than it looked like in the
19 beginning. And I wish you all good luck with everything from
20 here.

21 MR. NASSER: Thank you, Judge.

22 MS. YOUNGBLOOD: Thank you, your Honor.

23 THE CLERK: Judge, I do not believe that the rule 5
24 waiver was addressed.

25 THE COURT: Oh, okay. Was that not done with Judge

1 Stafford?

2 THE CLERK: Correct. It was -- the signed waiver was
3 submitted today by Mr. Nasser.

4 THE COURT: Oh, okay. We do have now a signed waiver,
5 but I should ask Mr. Joplin, [sic] I guess do you agree that
6 you have given up your rights to an identity hearing, and that
7 you are the Jamar Joplin that is named in the indictment
8 stemming from the District of Hawaii?

9 MR. NASSER: Sorry, Judge. It's Gabriel Eberhardt.

10 THE COURT: I'm sorry, Eberhardt. Sorry that was the
11 last guy. I threw my stuff aside so I was on the wrong one.

12 Mr. Eberhardt, do you agree that you are the Mr.
13 Eberhardt that is named in the indictment stemming from the
14 District of Hawaii?

15 THE DEFENDANT: Yes.

16 THE COURT: And you do give up your right to an
17 identity hearing to prove that; is that correct?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Thank you very much, Mr.
20 Eberhardt.

21 MR. NASSER: Thank you, Judge.

22 THE CLERK: We are off the record for Gabriel
23 Eberhardt.

24 (Proceeding concluded, 3:25 p.m.)

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